

# Exhibit 33

REDACTED

> From: "Elizabeth C. Pritzker" <ecp@girardgibbs.com>  
> Date: December 28, 2005 4:46:48 PM PST  
> To: "cindy@eff.org" <cindy@eff.org>  
> Cc: "Jenelle Welling (jww@classcounsel.com)" <jww@classcounsel.com>  
> Subject: FW: Unfinished Settlement Matters  
>  
> Cindy:  
>  
> Your email of yesterday came in just as we were finalizing the  
> motion for preliminary approval of settlement and the attendant  
> supporting documents. Those items were filed in the Southern  
> District of New York this afternoon. You should receive service  
> copies of everything we filed shortly.  
>  
> I regret to say that I am distressed by both the tone and content  
> of your email for several reasons.  
>  
> First, although you have told me that my word is "gold" in our  
> informal discussions about designation of future monitoring  
> functions to EFF, the fact that you included these matters in  
> formal correspondence to opposing counsel suggests otherwise. I'm  
> not certain why this is: I do feel that I have done my best, both  
> professionally and personally, to honor my commitments to you  
> throughout the litigation.  
>  
> Second, and more disconcerting, is the fact that you sought to  
> bring each of these matters to SONY's attention, personally, via  
> correspondence to defense counsel instead of to and through  
> Plaintiffs' Co-Lead Counsel. This is not an issue of position or  
> credit. As I have noted before, all correspondence that you send  
> to SONY is nonprivileged and, hence, discoverable by any one who  
> may wish to object to the settlement. The CMO allows for  
> communications between Co-Lead Counsel and defense counsel and, as  
> long as communications occur in that structure, they are protected  
> against any potential claim of conclusion by objectors and  
> strangers to the settlement. Direct e-mail and correspondence from  
> EFF, on the other hand, can be used as evidence of collusion by  
> objectors. It is in our collective best interests to protect the  
> settlement against even the suggestion of collusiveness by  
> objectors and others. [For these reasons, I am not cc'ing Sony  
> counsel here, but I am cc'ing EFF's class counsel instead].  
>  
> Third, you write in your concluding paragraph that "Sony BMG's  
> failure to ensure that [each of your] specified items are done in

> good faith . . . will turn our current endorsement of the  
> settlement into an objection by us and calls for objections by  
> others." As I am sure you know, EFF's execution of the parties'  
> Settlement Agreement obligates EFF, on behalf of its clients, "to  
> use all reasonable efforts to achieve approval of the Settlement."  
> Settlement Agreement, para. XI.A. EFF cannot fulfill that  
> obligation and simultaneously reserve the right to object to the  
> settlement, or encourage others to do so.  
>  
> I highlight these issues, again, in the hope that the Plaintiffs'  
> side of the litigation can continue to work cooperatively on  
> resolving settlement and related issues -- without the risk of  
> forfeiting the progress that we have made, or undermining in any  
> way the excellent settlement that we have achieved on behalf of the  
> class. We all strengthen our collective hand by doing what we can  
> to ensure that the Court, and any potential objectors, view all of  
> our communications with opposing counsel as non-collusive and free  
> of conflict.  
>  
> With that preface, let me address the individual issues in your email:  
>  
> 1. As previously noted, we have some modest edits to the banner ad  
> notice that you have proposed: all of our edits are intended to  
> shorten the notice and frame it in "easy to understand" language  
> (Sony's long-hand for "plain English"). We will send our proposed  
> edits to you, by separate email, shortly. Ultimately, what we say  
> may be limited by the amount of space to be devoted to the banner  
> ad (usually, these things are pretty small).  
>  
> 2. The landing page issue is an excellent issue for the  
> technological folks on the EFF team. Let's confer in the next  
> several days -- we may have some expertise to offer in this area as  
> well.  
>  
> 3. I am pretty sure all of the various electronic and other forms  
> of notice are either laid out in the current Settlement Agreement  
> or will engender no real objection from opposing counsel assuming  
> that they all can be done at no or little additional cost to  
> Sony). We can confer on specifics, perhaps early next week, and  
> offer a good, collective proposal on how to best get notice to the  
> class beyond the means specified in the Settlement Agreement.  
>  
> 4. At the meeting in NYC on December 19th, we proposed language  
> for the CD jewel case that closely tracks your suggested language  
> -- excluding the last sentence that you propose in your email,  
> which allows consumers to return the CD for a full refund if they  
> do not agree to the conditions in the EULA. I expect that Sony  
> will not wish to include this last sentence for business reasons.  
> Perhaps we can find a way to soften the language in such a way as  
> to get a similar message to consumers, without unnecessarily  
> offending Sony's sales channel. Again, let's confer on specifics.  
> I can resend the CD label that we originally drafted and shared at  
> the 12/19 meeting, and we can go from there.  
>  
> I hope you are enjoying your stay in NYC (are you still in NYC?).  
> I look forward to working with your team on these issues.

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>  
> Elizabeth C. Pritzker  
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>  
> This message is intended only for the addressee, and may contain  
> information that is privileged or confidential, and exempt from  
> disclosure under applicable law. If you are not the intended  
> recipient or agent of the intended recipient, you are hereby  
> notified that any dissemination, distribution or copying of this  
> communication is strictly prohibited; and you are asked to notify  
> us immediately by return email, or by telephone at (415) 981-4800.  
> Thank you.  
>  
> -----Original Message-----  
> From: Cindy Cohn [<mailto:cindy@eff.org>]  
> Sent: Tuesday, December 27, 2005 4:00 PM  
> To: Jeffrey P. Cunard; Jeffrey S. Jacobson; Bruce P. Keller  
> Cc: Elizabeth Pritzker; Kamber Esq. Kamber  
> Subject: Unfinished Settlement Matters  
>  
> Jeff, Jeff and Bruce, (with cc: to Elizabeth and Scott)  
>  
> Now that it seems that the documents necessary for the formal filing  
> with the court have been completed, we wanted to make sure that we  
> are all on the same page about what needs to happen in the next few  
> weeks, if not sooner, to ensure that class members receive robust,  
> easy-to-understand notice of the settlement. Several of these items  
> are referenced generally in the settlement documents, and, as you  
> know EFF has been informally designated and will shortly be formally  
> designated to perform many, if not all, of the review and comment of  
> these items as set out in the Settlement Agreement.  
>  
> Specifically, we should discuss:  
>  
> 1. Banner notice format: We have not received a response to our  
> email of December 22, 2005, with suggestions for the banner ad  
> notice. We believe that this should have the highest priority.  
>  
> The urgency of the need for banner ad notice of the security flaw and  
> exchange program is especially true for XCP, since Sony BMG has  
> removed XCP from the technologies that are subject to the ongoing  
> security vulnerability process. It is therefore imperative that  
> those who have purchased the XCP CDs receive clear, unequivocal  
> notice that they need to uninstall the XCP software from their  
> machines before the viruses that have already been identified reach  
> consumers and before any other security flaws in XCP are uncovered.  
> It is also true for MediaMax 5.0, however, since the current banners  
> do not give sufficient notice of the urgency of the need to patch or  
> uninstall the software.

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- > 2. Structured interview or other easy-to-use format for the landing
- > page of the website. We were pleased to learn from you at our
- > December 19, 2005 meeting that Sony BMG has already been consulting
- > with web design firms about how to turn the current landing page,
- > which is inadequate, into something that can be easily understood and
- > used. We expect to receive a draft for comment within the next week,
- > since the sooner consumers have easy access to the uninstallers and
- > patches, and links to antivirus software, as well as the other relief
- > agreed upon, the less likely they are to suffer virus or other
- > malicious attacks as a result of the security problems in the XCP and
- > MediaMax CDs.
- >
- > As we pointed out in our December 22 email, the current landing page
- > for those seeing the MediaMax 5.0 banner, which is to a question in
- > the FAQ on the website that does not put a person on clear notice of
- > the need to patch their system or provide any information about the
- > uninstaller, is inadequate.
- >
- > Again, we look forward to moving this discussion forward and
- > implementing a more robust, easy-to-understand landing page for
- > consumers for both XCP and MediaMax technologies.
- >
- > 3. Notice on Artists websites and artists email lists, along with
- > Google and other adwords, the SonyBMG website, banners and agreed
- > upon newspapers and magazines. My understanding based upon our
- > discussions on September 19, is that all of these channels will be
- > used to give notice to all XCP and MediaMax class members of the
- > settlement, sending them to the landing pages. Please confirm both
- > the fact of this and the timetable.
- >
- > 4. Notice form for any future Sony BMG CDs that contain DRM. We
- > believe that the notice should say:
- >
- > Notice: This CD will install software on your computer.
- > The software will:
- > \* limit what you can do with the music on this CD, including limiting
- > the number of copies you can make to XX.
- > \* communicate over the Internet with Sony BMG or its agents when you
- > play the CD on your computer.
- > \* subject you to other terms and conditions contained in the license
- > agreement that will be presented to you at the time that you play the
- > CD on your computer. If you do not agree to those terms, you may
- > return this CD for a full refund.
- >
- > Please be sure that you have up-to-date antivirus software running on
- > your computer at all times.
- >
- > \*\*\*
- >
- > While we were willing to, and did, wait to discuss these items until
- > after the filed documents were complete, we want to be clear: Sony
- > BMG's failure to ensure that these items are done in good faith will
- > be viewed by us as a failure of Sony to meet the terms of the
- > settlement agreement and will turn our current endorsement of the
- > settlement into an objection by us and calls for objections by others.



>  
> Please let us know when we can expect to continue this discussion.  
>  
> Cindy  
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<https://falcon.eff.org/mailman/listinfo/sonydrm-priv>